Supreme Court, U.S.
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NO. _____

In The

Supreme Court of the United States

CEOLA JAMES

Petitioner

V.

AMY TUCK, in her official capacity as President and agent of the Mississippi Senate, an officer approving Senate Bill 2289; TIM FORD, as Speaker of the House of Representatives and as an officer approving Senate Bill 2289; Ronnie Musgrove, Governor, in his capacity as the governing authority approving Senate Bill 2289; ERIC CLARK, in his official capacity as Secretary of State, JOHN DOES

Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the case before the Court was wholly insubstantial to justify the granting of a summary judgment, or whether a three judge panel should have been convened?

2. Whether preclearance by the U.S. Attorney General precludes litigation to challenge other constitutional issues not within the subject matter jurisdiction of a Section 5 preclearance action by the U.S. Department of Justice?

3. When a case is dismissed on summary judgment, can new issues be raised on appeal?

4. Whether issues dismissed in a summary judgment are waived in a case that was wrongfully dismissed?

5. Whether ex post facto laws apply to civil cases since the framers of the constitution never wrote in the constitution that civil cases were excluded from ex post facto laws?

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OPINIONS BELOW

United States Court of Appeals for the Fifth Circuit

The decision of the United States Court of Appeal for the Fifth Circuit is not published. It is reproduced in the Appendix at App. 10.

Trial Court

The decision of the trial court, the United States District Court for the Southern District of Mississippi, Jackson Division, was not published. It is reproduced in the Appendix at App. 1. The opinion denying the Petition for Rehearing is reproduced in the Appendix at App. 6.

STATEMENT OF JURISDICTION

Jurisdiction is invoked pursuant to Section 5 of the Civil Rights Act of 1965, 42 U.S.C. 1973c.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

SECTION 5 OF THE VOTING RIGHTS ACT OF 1965
42 U.S.C. Section 1973c

Section 5 of the Voting Rights Act provides:

"Whenever a state or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence under 1973b(b) of this title are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in

force or effect on November 1, 1972, such state or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure, has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined

by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court." 79 Stat. 439, as amended, 89 Stat. 402, 404, 42 USC Section 1973c (1970 ed Supp V) (42 USCS Section 1973c).

ARTICLE I, SECTION 9, CLAUSE 3, UNITED STATES CONSTITUTION

Section 9 - Powers prohibited to United States
Clause 3 - No Bill of Attainder or ex post facto Law shall be passed.

ARTICLE I, SECTION 10, CLAUSE I, UNITED STATES CONSTITUTION

Section 10 - Powers Prohibited to States
Clause 1 - No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any thing but gold and silver Coin a Tender in payment of debts; pass any bill of Attainder, ex post facto Law, or Law, or Law impairing the obligation of Contracts, or grant any title of nobility.

MISSISSIPPI SENATE BILL 2289
(A Bill amending Section 23-15-849 of the Mississippi Code of 1972)

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Section 2 (b) Upon occurrence of a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof as follows:

Section 2(i) If less than half of the term remains, the appointee shall serve until the expiration of the term. [1]

Section (c) This subsection (2) shall apply to all gubernatorial appointees to the Supreme Court or Court of Appeals who have not stood for special election as of the date Senate Bill 2289 – 2002 Regular Session goes into effect as if Senate Bill No. 2289 2002 Regular Session, were in full force and effect on the day of their appointments. **(This Section made Senate Bill 2289 retroactive, thereby cancelled the November 5, 2002 general election).**

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[1] Less that half of the term remained, therefore the appointed judge remained an interim judge for three years as opposed to one year under the old statute under which the judge was appointed. The Court will notice that the unexpired term under Mississippi Code Annotated, 1972, Section 23-14-849 was changed from filling the unexpired term from a position to be filled by the qualified electors to a position to be filled by appointment of the Governor when less than half of the term remained.

Mississippi Code of 1972, Annotated, Section 23-15-849, Elections to fill vacancies in office of Judge of Supreme Court, or chancellor, interim appointments.

(1) Vacancies in the office of judge of the Supreme Court, or Circuit Judge, or chancellor, shall be filled for the unexpired term by the qualified electors for the next regular election for state officers or for representatives in Congress occurring more than nine (9) months after the existence of the vacancy to be filled, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following his election. Upon the occurrence of such a vacancy, the Governor shall appoint a person from the district in which the vacancy exists to hold the office and discharge the duties thereof until the vacancy shall be filled by election as hereinafter provided **(This is the statute that was in effect at the time the election was cancelled).**

STATEMENT OF FACT

On January 2, 2002, Petitioner filed to qualify as a candidate for the Mississippi Supreme Court. A fee of $200.00 was paid, and the necessary qualifying papers were filed. Petitioner was seeking to participate in the special election that was set by the governor for November 5, 2002. The special election was retroactively cancelled by the Mississippi Legislature. It basically changed the period of appointment from one year to three years, even though the interim justice was only appointed for one year until a special election could be held. Senate Bill 2289 was precleared before the election was held. Petitioner was not a part of the preclearance report for Senate Bill 2289 that was sent by the Mississippi Attorney General to the U.S. Department of Justice for preclearance.

The Mississippi Legislature did not give the Petitioner or the Mississippi Secretary of State's office any notice that the election would be cancelled. When the preclearance report was submitted, Petitioner was treated as if she did not exist. Petitioner had a hearing on a temporary restraining order, but the chief adverse witness did not answer the subpoena, and the state made no effort to produce the witness. This was the only witness that had knowledge or proof of what happened in this case. A continuance was never granted to put the proof before the court.

The U.S. district court ruled that it had sufficient facts from the hearing on the preliminary injunction to consider the Defendant's Motion for summary judgment. Petitioner asked for a continuance. It was denied. Petitioner requested additional time to hire counsel. This request was denied. Petitioner never had a hearing on the merits of the case. The Court granted Defendant's Motion for a Summary Judgment, and dismissed Petitioner's case with prejudice.

In granting a preclearance, the U.S. Department of Justice made it clear that it only considered whether the minority vote had retrogressed, and that the issues of due process, equal protection, and other issues were not within the scope of a Section 5 preclearance. On appeal to the U.S. Court of Appeals for the Fifth Circuit, Petitioner raised several new issues that were apparent from the record and from the complaint itself. In appealing the summary judgment, Petitioner argued that the summary judgment had been wrongfully granted, Petitioner also argued that the case should be remanded for a hearing, and that the lower court should have convened a three judge panel.

The United States court of Appeals affirmed the decision made by the United States District Court, and the Appellant brings this case to this court by Application for a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

(1) **The United States Court of Appeals for the Fifth Circuit has decided certain federal questions and issues that have not been settled by this court, and also have decided certain questions in a manner that is inconsistent with the prior rulings of this court and other state courts. (The reasons for granting the Petition for Writ of Certiorari are discussed in the same order that the questions are presented for review based on the ruling of the U.S. Court of Appeals for the Fifth Circuit)**

(1) Whether the case before the Court was wholly insubstantial to justify the granting of a summary judgment, or whether a three judge panel should have been convened?

The Court, in its ruling of October 14, 2003, cites United States v. Saint Landry School Board, 601 F. 2d 859, (5th Cir., 1979), In this case the court held that a three judge panel is not required if the claim is wholly insubstantial, or completely without merit. A review of the records on appeal shows that the Appellant/Petitioner has a meritorious case and that the Petitioner's due process rights were violated along with other violations that were apparent on the face of the complaint. A summary judgment was granted to dispose of genuine issues of material fact. The case was dismissed with prejudice. A summary judgment should not be granted where there are genuine issues of material facts. Fed. R. Civ. P., Rule 56 (c), Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1966). The ruling of the District Court should be set aside if it is clearly erroneous. Duncan v. Polythress, 657 F. 2d 691 (5th Cir., 1981). The record shows that Plaintiff/Petitioner's claim is not wholly insubstantial or completely without merit.

(2) Whether preclearance by the United States Attorney General precludes litigation to challenge other constitutional issues not within the subject matter jurisdiction of a Section 5 preclearanes action by the U.S. Department of Justice?

The Fifth Circuit Court of Appeals in its ruling of October 14, 2003 also cited Morris v. Gresette, 432 U.S. 491, (1977). In this case, the court held that once the attorney general fails to object to a proposed change, judicial review of the attorney general's action is precluded. Petitioner's case does not concern matters reviewed by the U.S. Attorney General, but rather it concerns matters not reviewed by the Attorney General. Petitioner does raise one issue in her

Motion for Preliminary Injunction. The fact was brought out that the Petitioner was not included in the Mississippi Attorney General's report. The report stated that no person was affected by the change. Petitioner's name was left out of the report after she was told that she would be a part of the report. The Court will notice that on page 492, paragraph (c) of the case Morris v. Gresette, Ibid., the Court clearly states that "Where the discriminatory character of an enactment is not detected upon review by the Attorney General, it can be challenged in traditional constitutional litigation, but it cannot be challenged in a suit seeking judicial review of the Attorney General's exercise of discretion under Section 5." Petitioner's name was not included in the review process, and Petitioner was treated as if she did not exist. Petitioner had no objection to the Bill changing the election procedure, but the retroactive clause that was placed in the Bill to cancel the special election that was in process was the objection. Also, the fact that the Petitioner was legislated off the ballot after Petitioner had elected to run for the Mississippi Supreme Court as opposed to the Chancery district seat which the Petitioner held at that time, without any notice whatsoever, had a chilling effect on the voters of the state of Mississippi. Senate Bill 2289 was not initially written to be retroactive, but a compromise was reached to make the Bill pass by adding a retroactive clause in order to get the Bill passed. Petitioner was the only candidate legislated off the ballot. There was another Supreme Court Candidate with an interim appointment, but he did not have an opponent, so he was not affected.

The Petitioner was informed by the U.S. Department of Justice that the only issue that the U. S. Attorney General's office considered was whether or not the minority vote was retrogressed by the legislative act. Petitioner was informed by the U.S. Justice Department that its standard of review was governed by Beer v. United States et al., 425 U.S., 130, 47 L.

Ed. 2d 629, 968, 96 S. Ct. 1357 (1989), and Janet Reno v. Bossier Parish School Board, et al, 528 U.S. 320, 145 L. Ed. 2d 845, 120 S. Ct. 866 (1999). Petitioner was clearly informed that no issues that were raised by Petitioner such as sex discrimination, due process, equal protection, or ex post facto concerns were part of the subject matter jurisdiction of the review made by the U.S. Department of Justice. The preclearance letter issued by the U.S. Attorney General clearly stated that the "failure of the attorney general to object does not bar subsequent litigation to enjoin the enforcement of the change." See Volume 1, Page 68, paragraph 2.

TheCourt, in its ruling of October 14, 2003, citing Perkins v. Matthews, 400 U.S. 379 (1971), held that a three judge Court lacked jurisdiction to determine whether the change had a discriminatory purpose. The court in the Perkins case., Ibid, decided a matter that was the subject of a preclearance action under the Voting Rights act of 1965, so the court held that a three judge panel did not have jurisdiction to decide that issue since it was a matter that should have submitted for preclearance before enforcement. In the present case, the issues raised are subject to the jurisdiction of the Voting Rights Act of 1965, but these issues were not part of the subject matter jurisdiction exercised by the U.S. Department of Justice in it's preclearance process. In the present case, Senate Bill 2289 has already been submitted for preclearance, and it has in fact been precleared by the U.S. Department of Justice. Constitutional issues not covered by preclearance were filed in the United States District Court for the Southern District Mississippi. Preclearance by the United States Attorney General or by the United States District Court does not bar an action to determine whether the change has other constitutional issues not covered by Section 5 of the Voting Rights Act. Reno v.

Bossier School Board, 1119 S. Ct. 2390 (1999; United States v. Saint Landry Parish School Board., 601 F. 2d 859 (5th Cir., 1979).

(3) When a case is dismissed on summary judgment, can new issues be raised on appeal?

This Court, citing Leverette v. Louisville Ladder Co., 183 F. 3rd 339 (5th Cir., 1999) ruled that the Petitioner raised issues for the first time on appeal, and that these issues should not be addressed by the Court, absent extraordinary circumstances. Petitioner alleges that extraordinary circumstances do exist because Petitioner was never heard on the Merits. The present case is distinguished from the Leverette case because the Leverette case was heard on the merits. Any new issues raised by the Petitioner are not outside the scope of the Pleading. Also, the Petitioner is asking that the case be reversed and remanded. The request for reversal is not based on any new arguments. The Court will notice that on page 4 of the Appellee's Brief, the Appellee did not specify what "new issues" were alleged. The issues that would require reversal are clearly alleged in the lower Court, and not alleged for the first time on appeal, The record is clear that genuine issues of material fact exists on the face of the Complaint. A summary judgment should not have been granted, a trial should have been held on the merits, and a three-judge panel should have been convened.

(4) When a case is dismissed in a summary judgment, can new issues be raised on appeal?

The United States Court of Appeals for the Fifth Circuit, in its ruling of October 14, 2003, cited the case of Hughes v. Johnson, 191 F. 3rd 607, (5th Cir., 1999) which

held that issues not briefed were waived by the Petitioner. Petitioner would show that issues not tried cannot be properly briefed or waived. This is an appeal from a summary judgment and not a trial on the merits. Petitioner is not seeking a reversal on the issues that were not briefed, but rather the Petitioner is seeking a reversal on the issues that were briefed.. In the case of Hughes v. Johnson, there was a trial on the merits, and the matters briefed went to the merits of the appeal. In the instant case, the matters not briefed are harmless in that they do not constitute grounds for reversal.

(5) Whether Amendments are limited to cases involving immunity?

The U.S. court of Appeals for the Fifth Circuit, citing Kennedy v. Tangipahoa Parish Library Board of Conrol, 224 F. 3rd 359 (5th Cir. 200) held that a heightened pleading requirement applies to cases involving immunity. It is common knowledge that amendments to pleadings are favored regardless of subject matter jurisdiction. In the Kennedy case, Ibid, cited by the Court, the court ruled that the district court should have allowed the Plaintiff to amend her Complaint. The Court also held that courts of appeal applies de novo review to dispositive Motions such as the Motion for a Summary Judgment. The Court further held: (1) (1) District Courts should avoid dismissals for failure to state a claim upon which relief can be granted, Fed. R. Civ. P., Rule 12 (b), 28 U.S.C.A. The Court also held that to ascertain whether a complaint states a claim, the court must construe the complaint liberally in the Plaintiff's favor and accept all factual allegations in the Complaint as true. Fed. R. Civ. P., Rule 12 (b) (6).

(6) Whether ex post facto laws apply to civil cases since the framers of the U.S. Constitution never wrote in the Constitution that civil cases were excluded from ex post facto laws?

(2) The United States Court of Appeals for the Fifth Circuit has decided an important federal question that conflicts with the U.S. constitution, and with prior rulings of this court and other state courts. The multiple and conflicting decisions on civil ex post facto laws indicates that this important federal question has not been but should be settled by this court.

This case invokes the issue of ex post facto laws as they relate to civil litigation, and calls into question the case of Calder v. Bull, 3 Dall. 386 (1798). This issue is discussed at length in the Cato Journal. The Case Against Civil Ex Post Facto Laws, Steve Selinger, *The Cato Journal,* Vol. 15. No. 2-3, www, cato.org/publs/journal. (This document was copied for the panel of judges for the United States Court of Appeals for the Fifth Circuit.) The Petitioner alleges that she has a legitimate claim of entitlement as opposed to a mere expectation interest. this case invokes a study of the federal convention of 1787, Article 1, Section 9, Clause 3, and Article 9, Section 10, Clause 1. The framers of the U.S. Constitution never wrote in the constitution that civil laws were to be excluded from ex post facto laws. Much confusion has evolved from Calder v. Bull, which needs to be revisited in view of the problems of ex post facto laws in civil cases. There was no trial on the merits in the lower court, so this important issue was never litigated or properly addressed.

CONCLUSION

The Petitioner is seeking to have the judgments of the United States District Court and the United States Court of Appeals for the Fifth Circuit reversed and remanded to the United States District Court for a hearing on the merits before a three judge panel. Petitioner is also seeking damages and attorney fees. Petitioner was represented by an attorney on appeal to the United States court of Appeal for the Fifth Circuit. **PETITIONER RESPECTFULLY REQUESTS THAT A WRIT OF CERTIORARI BE GRANTED SO THAT JUSTICE WILL BE SERVED.**

And Petitioner requests such general relief that the Court deems proper in this case.

Respectfully submitted,

Ceola James

CEOLA JAMES
Attorney at Law, PRO SE

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE: CEOLA JAMES **PLAINTIFF**

VS. **CIVIL ACTION N0 3:02CVI447BN**

AMY TUCK, ET AL. **DEFENDANTS**

OPINION AND ORDER
(Filed November 4, 2002)

This cause is before the Court on the Motion for Summary Judgment of Defendants. Having considered the Motion, Response, Rebuttal, and all attachments to each, as well as supporting and opposing authority, the Court finds that the Motion is well taken and should be granted. Also before the Court are the Motion of Plaintiff to extend Time to Employ Counsel, and the Petition of Plaintiff for Rehearing. Because the Motion of Defendants for Summary Judgment is granted herewith, both of Plaintiff's Motions should be denied as moot.

I. Background and Procedural History

The subject cause of action challenging Mississippi Senate Bill 2289, Chapter 586 (2002) (hereinafter "the Bill"}. The bill eliminates the requirement for a special election to fill vacancies on the Mississippi Supreme Court and the Mississippi Court of Appeals, so long as less than one-half of the term of the vacating judge remains. If that condition is met, the vacated position is filled by appointment. Prior to

enactment of the bill, a special election was set for November 5, 2002 to elect judges to fill a vacated Mississippi Supreme Court Justice Position. Plaintiff Ceola James had qualified to run for the position. With the passage of the bill, the special election was unnecessary because the position in question was vacated by a judge with less than one half of his term remaining,

Aggrieved by the situation, James filed this suit on September 4, 2002, contending *inter alia* that the bill was a prohibit ex post facto law. The Court heard oral arguments on September 13, 2002, regarding James' prayer for a preliminary injunction to force the state to hold a special election for the subject judicial position. The Court denied James' prayer for a preliminary injunction. Defendants filed the subject Motion for Summary Judgment on September 13, 2002. Plaintiff filed both her Motion to Extend Time to Employ Counsel and her Petition for Rehearing (regarding the preliminary injunction hearing) on October 1, 2002. All of these Motions are now ripe for consideration by the Court.

II. Legal Standard

Rule 56 of the Federal Rules of Civil Procedure provides, in relevant part, that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed R. Civ. P. 56 (c). The United States Supreme Court has held that this language "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a sufficient showing to establish the existence of an

element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) See also Moore v. Mississippi Valley State Univ., 871 F. 2d 545, 549 (5th Cir. 1989); Washington v. Armstrong World Indus., 839 F. 2d 1121, 1122 (5TH Cir., 1988).

The party moving for summary judgment bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record in the case which it believes demonstrates the absence of a genuine issue of material fact. Celotex, 477 U.S.at 323. The Movant need not, however, support the motion with materials that negate the opponent's claim. Id. As to issues on which the non-moving party has the burden of proof at trial, the moving party need only point to portions of the record that demonstrates an absence of evidence to support the non-moving party's claim. Id. at 323-324. The non-moving party must then go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." Id. at 324.

III. Analysis

During the September 13, 2002, hearing on Plaintiff's prayer for a preliminary injunction, the Court addressed all of the issues raised in Defendant's Motion for Summary Judgment. In accordance with the findings and rulings on the record of the September 13, 2002, hearing, the Court now finds that Defendants' Motion for Summary Judgment is well taken and should be granted. Because the Motion for Summary Judgment is granted herewith, Plaintiff's Motions are moot and should be denied as such.

IV. Conclusion

IT IS THEREFORE ORDERED that the Motion for Summary Judgment of Defendants (9-1) is hereby denied.

IT IS FURTHER ORDERED that the Motion of Plaintiff to Extend Time to Employ Counsel (16-1) is hereby denied as moot.

IT IS FURTHER ORDERED that the Petition of Plaintiff for Rehearing (15-1) is hereby denied as moot,

IT IS FURTHER ORDERED that this case is dismissed with prejudice. A separate final judgment will be entered the day.

SO ORDERED this the 1st day of November, 2002.

/s William Barbour
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE; CEOLA JAMES **PLAINTIFF**

VS. **CIVIL ACTION NO. 3:02 CV1447BN**

AMY TUCK, ET AL **DEFENDANTS**

FINAL JUDGMENT
(filed November 4, 2002)

In accordance with the Opinion and Order entered this day granting the Motion of Defendants for Summary Judgment, this case is hereby dismissed with prejudice,

SO ORDERED, this the 1st day of November, 2002.

/s/ William Barbour
UNITED STATES DISTRICT COURT JUDGE

IN THE UNTED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE: CEOLA JAMES **PLAINTIFF**

VS. **CIVIL ACTION NO. 3:02CV1447BN**

AMY TUCK, ET AL **DEFENDANTS**

OPINION AND ORDER
(Filed December 2, 2002)

On November 4, 2002, this Court entered an Opinion and Order and a Final Judgment Dismissing the subject cause of action with prejudice. On November 8, 2002, Plaintiff, Ceola James filed the following two Motions with the Court: (1) Motion to Request Court's Edited Opinion of September 13, 2002, Denying Plaintiff's Motion for a Preliminary Injunction; and (2) Motion to Reconsider. Having considered the Motions, the Court finds that neither is well taken and that both should be denied.

A) Motion to Request Court's Edited Opinion of September 13, 2002, Denying Plaintiff's Motion for a Preliminary Injunction

The undersigned presided over a hearing on September 13, 2002, regarding Plaintiff's Motion for a Preliminary Injunction. Via a bench opinion rendered and read into the record on the same day, the Motion for Preliminary Injunction was denied. Also before the Court at that time was Defendant's Motion for Summary Judgment. All of the issues presented in the Summary Judgment were covered by the oral arguments of the parties, and the bench

opinion rendered by this Court during the September 13 hearing. The Court therefore entered a brief written opinion granting the Defendant's Motion for a Summary Judgment. The Opinion, which was filed on November 4, 2002, referred to the record of the September 13 hearing, as support for the Court's conclusion that summary judgment in favor of Defendants should be granted.

Plaintiff is under the impression that the Court agreed to "edit" its bench opinion if the case proceeds to appeal. This is not the case. The record for appeal purposes consists of the written documents filed with the clerk of the Court as well as the oral arguments and bench opinion rendered by the Court during the September 13 hearing. Copies of the written documents are available at the office of the Clerk of the Court, and a transcript of the September 13 hearing can be obtained from the court reporter. For these reasons, Plaintiff's Motion to Request Court's Edited Opinion of September 13, 2002, and Denying Plaintiff's Motion for a Preliminary Injunction must be denied.

B) Motion to Reconsider

Plaintiff seeks reconsideration of the Final Judgment dismissing this cause of action. Under Rule 59 (e) of the Federal Rules of Civil Procedure, "(t)he court ....recognizes only three possible grounds for any motion for reconsideration: (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, and (3) the need to correct a clear error of law or prevent a manifest injustice." Atkins v. Marathon Le Tourneau Co.,130

F.R.D. 625, 626 (S.D. Miss., 1990) (citing NDRC v. EPA, 705 F. Supp. 698, 702 (D.D.C. 1989) See also Russ v. International Paper Co., 943 F. 2d 589, 593 (5th Cir.. 1991, cert. denied, 503 U.S. 987 (1992); F.D.I.C. v. Cage, 810 F. Supp. 745, 747 (S.D. Miss. 1993) Litigants considering a Rule 59 (e) motion have been "strongly cautioned" to carefully consider the three grounds for such a motion. Atkins, 130 F.R.D. at 626, n. Whatever may be the purpose of Rule 59 (e), it should not be supposed that it is intended to give an unhappy litigant one additional chance to sway the judge." Id., citing Durkin v. Taylor, 444 F. Supp. 879 (E.D. Va. 1977).

Regarding the instant Motion, Plaintiff has failed to establish any of the three grounds for reconsideration. There has been no intervening change of law. Plaintiff has produced no evidence that was previously unavailable to her, and that was not previously produced and considered by the Court. Nor has Plaintiff persuaded the Court that it has made a clear error of law that would result in manifest injustice. The Court therefore finds that the Motion of Plaintiff to reconsider is not well taken and should be denied.

Conclusion

Based on the findings presented above:

IT IS THEREFORE ORDERED that Plaintiff's Motion to Request Court's Edited Opinion of September 13, 2002, Denying Plaintiff's Motion for a Preliminary Injunction (19-11) is hereby denied.

IT IS FURTHER ORDERED that Plaintiff's Motion to Reconsider (20-1) is hereby denied.

SO ORDERED this the 2nd day of December, 2002.

/s/ William Barbour
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03 – 60108

Summary Calendar

CEOLA JAMES, PLAINTIFF/APPELLANT

Versus

AMY TUCK, In her official capacity as President and Agent of the Mississippi Senate, an officer approving Senate Bill 2289;
TIM FORD, as Speaker of the House of Representatives and as an Officer approving Senate Bill 2289;
RONNIE MUSGROVE, Governor, in his capacity as the governing authority approving Senate Bill 2289;
ERIC CLARK, in his official capacity as Secretary of State;
JOHN DOES,

DEFENDANTS/APPELLEES

Appeal from the United States District Court
For the Southern District of Mississippi
USDC No. 3:02 - CV – 1447-BNJ

(Filed October 14, 2003)

Before REAVLEY, JONES, and PRADO, Circuit Judges.

PER CURIAM:

Ceola James appeals the district court's order granting summary judgment and dismissing with prejudice her suit brought under the Voting Rights Act, 42 U.S.C. Section 1971 et seq. James argues on appeal that the district court erred in determining that her Voting Rights Act claim was frivolous without convening a three-judge panel. A single judge district court has the authority to determine whether a three-judge court is required and a "three-judge court is not required if the claim is wholly insubstantial or completely without merit." See United States v, Saint Landry Parish Sch. Bd., 601 F. 2d 859, 863 & n. 6. (5th cir., 1979). Once the Attorney General has failed to object to a proposed change in procedure, judicial review of the Attorney General's action is precluded; thus, to the extent James sought Judicial review of the Attorney General's actions, her claim was barred. See Morris v, Gressette, 432 U.S. 491, 504-05 (1977). James suggests that a three-judge court was required to determine whether the changes had a discriminatory purpose or effect of the changes; however, the three-judge district court lacks jurisdiction to make such a determination. See Perkins v. Matthews, 400 U.S. 379, 383 (1971).

. pursuant to 5th cir.R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

This court will not address the arguments that James raises for the first time on appeal, namely that the change in the election law denied Mississippi voters due process and that the approval of the election ballots required preclearance by the United States Attorney General. See Leverette v. Louisville Ladder Co., 183 F. 3d 339, 342 (5th Cir. 1999). Moreover, James failed to brief the retroactivity, vagueness, personal due process, ex post facto, and equal protection claims she raised below, and they are deemed abandoned on appeal. See Hughes v. Johnson, 191 F. 3d 607, 612-13 (5th Cir.,1999); Yohey v. Collins, 985 F. 2d 222, 224-25 (5th Cir.1993).

James argument that the district court should have permitted her to amend her complaint must also fail, as the heightened pleading requirement applies to cases involving immunity. See Kennedy v. Tangiopahoa Parish Library Bd. of Control, 224 F. 3d 359, 376 (5th Cir. 2000).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 03-60108

CEOLA JAMES PLAINTIFF – APPELLANT

v.

AMY TUCK, In her official capacity as President and Agent of the Mississippi Senate, an officer approving Senate Bill 2289; Tim Ford, as Speaker of the House of Representatives, and as an Officer approving Senate Bill 2289; RONNIE MUSGROVE, Governor, in his capacity as the governing authority approving Senate Bill 2289; ERIC CLARK, in his official capacity as Secretary of State, JOHN DOES.

DEFEDANTS/APPELLEES

Appeal from the United States District Court for the Southern District of Mississippi, Jackson

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(Filed December 4, 2003)

(Opinion 10/14/03, 5 Cir., _____, _____ F. 3d _____)

Before REAVLEY, JONES, and PRADO, Circuit Judges.

PERCURIAM

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehering En Banc (Fed. R. App.P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Thomas M. Reavley
United States Circuit Judge